IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

W.A. No.3695 of 2002
and
W.A.M.P.No.3372 of 2003

1.S.Annamalaipillai
2.Kannagi ... Appellants/Petitioners

-vs-

1.The Government of Tamil Nadu
rep. by its Secretary to Govt.,
Adi Dravida Welfare Department,
Fort St.George, Madras 9.

2.The District Collector,
Villupuram District, Villupuram.

3.The Special Tahsildar,
Adi Dravidar Welfare Officer,
Kallakurichi. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 21.2.2002 made in W.P.No.8373 of 1999.

WP.No.8373 of 1999: Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records relating to 4(1) Notification dated 4.2.1999 issued by the 3rd Respondent under sec.4(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare Schemes Act 1978 and published in the Villupuram District Gazette dated 4.2.1999 in so far as the petitioner's lands are concerned comprised in S.No.57/1, 87/3, 87/4, 87/10, 87/11, 87/2, 87/7, 87/8 and 87/9 totalling an extent of 1.49 acres and quash the same.

For Appellants : Mrs.AL.Gandhimathi
For Respondents : Mr.C.Thirumaran,G.A.

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is filed against the order of a learned Single Judge, dated 21.02.2002, made in W.P.No.8373 of 1999 in and by which the learned Judge, after finding that as on the date of passing of the order nothing survives in the writ petition, dismissed the same.

2. The lands belonging to the writ petitioners/appellants were sought to be acquired by the respondents under Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act 1978 for providing house sites to Adi Dravidar. It is the grievance of the petitioners that though they submitted their objections regarding the proposal for acquisition, the same were not duly considered and no order was passed by the District Collector under Section 4(1) of the said Act.

3. The learned counsel appearing for the petitioners/appellants has brought to our notice the necessary averments in the affidavit filed in support of the writ petition.

4. The learned Single Judge based on the information furnished in the counter affidavit namely that the award has been passed on 23.03.1999, the award amount has been deposited in Sub-Treasury at Kallakurichi on 31.3.1999 and the pattas were also issued to the Adi Dravidars, after finding that nothing survives for the petitioner to pursue the writ petition, dismissed the same.

5. We heard the learned counsel for the appellants as well as the learned Government Advocate for respondents.

6. The file produced by the learned Government Advocate shows that the petitioners submitted their objections, which are available in the file. As per the provisions of the Act, it is incumbent on the part of the District Collector to pass an order on the basis of the report of the authorised authority/District Collector under Section 4(1) of the Act.

7. Learned Government Advocate on thorough verification from the records submitted that there is no order/decision by the District Collector in terms of Section 4(1) of the Act. It is not in dispute that on the basis of the report of the authorised authority/Tahsildar and the objections if any, it is the duty of the District Collector to pass an order under Section 4(1) of the Act and thereafter, the same has to be published in the District Gazette.

8. In view of the admitted factual position as verified from the records, it is clear that the District Collector has not passed an

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order under Section 4(1). Though this aspect was specifically raised in the affidavit filed in support of the writ petition, unfortunately, the same was not considered by the learned Judge. Inasmuch as an order under Section 4(1) of the Act is mandatory, in the absence of the same in the records/files produced by the learned Government Advocate, we hold that the acquisition proceedings cannot be proceeded. Even in the counter affidavit filed by the third respondent it is fairly stated that after the beating of Tom-Tom in the village and fixing a copy in the notice board of the Village Administrative Officer on 27.08.1999, the writ petitioners filed the above writ petition before this Court and obtained an order of stay of dispossession.

9. Taking note of all these aspects, we are of the opinion that the District Collector has to pass an order in terms of Section 4 (1) of the Act with the available materials. On this ground, we set aside the order of the learned Single Judge dated 21.02.2002 and remit the matter to the District Collector, Villupuram, second respondent herein to pass appropriate orders in terms of Section 4(1) of the Act, within a period of eight weeks from the date of receipt of a copy of this order. The writ appeal is allowed to the extent mentioned above. No costs. Consequently, connected miscellaneous petition is closed.

gms

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Secretary to Govt.,Government of Tamil Nadu
Adi Dravida Welfare Department,Fort St.George, Madras 9.

2.The District Collector,Villupuram District, Villupuram.

3.The Special Tahsildar,Adi Dravidar Welfare Officer, Kallakurichi.

+ one cc to Mrs.AL.Ganthimathi, Advocate Sr.No.41986.
+ one cc to Government Pleader, Sr.No.41886.

PV (CO)
RSM/18.9.2006 W.A.No.3695 of 2002

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